

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 27.06.2019
CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) .No.33 of 2019 (PD)
and
C.M.P. (MD) .No.153 of 2019

M.Sundar

... Petitioner/
Respondent / Plaintiff

Vs.

P.John Chelladurai

... Respondent /
3rd party / proposed 2nd defendant

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 10.09.2018, passed in I.A.No.507 of 2018 in O.S.No.63 of 2017 by the VI-Additional District Judge, Madurai.

For petitioner : Mr.P.Arunjayatram

For respondent : Mr.T.R.Jeyapalam

ORDER

This civil revision petition has been filed by the petitioner challenging the order, dated 10.09.2018, passed in I.A.No.507 of 2018 in O.S.No.63 of 2017, whereby and whereunder the Court below allowed the petition filed by the respondent / 3rd party seeking to implead him as second defendant in the suit.

2. The petitioner as plaintiff has filed the suit in O.S.No.63 of 2017 for declaration and permanent injunction. During the pendency of the suit, the respondent / 3rd party filed the application in I.A.No.507 of 2018 seeking to implead him as 2nd defendant in the main suit stating that the first defendant in the suit has executed a Will in her favour in respect of the suit properties. The Court below has allowed the same. Challenging the said order, the petitioner/plaintiff is before this Court.

3. Heard the learned counsel for both sides and perused the records carefully.

4. It is seen that the petitioner / plaintiff has filed the suit for declaration that A and B schedule properties are belonged



to him and he is the lawful owner of the same as per Will dated 23.07.2015 and for permanent injunction restraining the defendants therein from claiming, alienating or encumbering the suit properties. According to the petitioner/plaintiff, the suit properties originally belonged to his father-in-law by name Palani and he settled the suit properties in his name and cancelled the earlier registered Will in favour of his wife Kanaga / 1st defendant by executing an unregistered Will, dated 23.07.2015. The first defendant has stated in her written statement that the suit A schedule property is her self-acquired property and B schedule property was settled by her husband viz., Palani through a registered Will executed in the year 1998 and she has in turn settled the suit properties in favour of the respondent herein through a registered Will on 06.01.2017. Subsequent to the filing of the written statement, the first defendant died. Hence, the respondent herein has filed the application seeking to implead him as 2nd defendant in the suit, since the suit properties have been settled in her favour by the first defendant.

5. According to the petitioner, as per Section 15 of the Hindu Succession Act, the respondent is not eligible to succeed the properties in question. Admittedly, the respondent herein claimed right over the properties based on a Will executed by the first defendant. The question with regard to the validity of the Will executed by Palani and the first defendant can be decided only after trial. The Court below has allowed the petition holding that the respondent herein is the fit person for defending the case of the first defendant and the right of the respondent herein will be decided after trial. This Court does not find any reason to interfere with the said finding of the Court below. There is no merit in this petition.

6. At this juncture, the learned counsel appearing for both sides requested this Court that this Court may direct the Court below to dispose of the suit within a stipulated time. Considering the same, the Court below is directed to dispose of the suit in O.S.No.63 of 2017 on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order. Both the parties are directed to cooperate with the Court below for early disposal of the suit.

7. With the above direction, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //



gcg
To

1. The VI-Additional District Judge,
Madurai.

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2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc To M/S.T.R.JEYAPALAN, Advocate, Sr.No.71882

+1cc To M/S.P.ARUN JAYATHRAM, Advocate, Sr.No.72277

C.R.P(MD) .No.33 of 2019 (PD)
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BUC(15.07.2019) 3P 6C